IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No. 22249 of 2000

Between:

Y.C.Rangaiah, S/o Late Y.Naraiah,

61 years, Occ: Retd.Govt.Servant,

CISF, Group Headquarters, Hyderabad

R/o Hyderabad.

..... PETITIONER

AND

1. Union of India, rep. by its Secretary to

Finance, Central Secretariat, New Delhi.

2. The Director General, Central Industrial

Security Force, Ministry of Home Affairs,

Block No.13, CGOs complex, Lodhi Road,

New Delhi.

3. The Group Commandant, Central Industrial

Security Force, Hyderabad Central Industrial

Security Force Campus, NISA, Post:Hakimpet,

Hyderabad-78.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to

issue a direction order or writ, one in the nature of Mandamus

a. declaring the action of the respondents in recovering the enhanced pension amount from petitioner's salary w.e.f.1.1.1996 to 30.6.2000 i.e. date of superannuation, on the ground that the re-employed candidates are not entitled for the enhanced pension pursuant to the Proceedings No.25/26-2-99 bearing No.E.27015(3)/1/98/Entt/135, consequence of which through Proceedings dt.21.6.2000 bearing No.E.27015/(3)/GHH/Accts-I/2000/3207 is arbitrary, illegal, unconstitutional and contrary to the Judgment of the Supreme Court;

b. directing the respondents to repay the recovered amount of Rs.53,759/- to the petitioner with interest @ 18% per annum, which has been deducted illegally;

c. granting all consequential benefits with costs.

Counsel for the Petitioner: Mr.M.RAMA RAO

Counsel for the Respondents: . Mr. S.S.Varma (Addl SC for CG)

The Court made the following :

ORAL ORDER:

This writ petition is filed seeking a Mandamus declaring the action of the respondents in recovering the enhanced pension amount from the petitioner's salary with effect from 1-1-1996 to 30-6-2000 i.e. date of superannuation, on the ground that the re-employed candidates are not entitled for enhanced pension, as arbitrary and contrary to the Judgment of the apex Court and consequently, to direct the respondents to refund the amount of Rs.53,759/- to the petitioner with interest at 18% per annum.

The facts are not in dispute. Petitioner joined the Indian Army as a Sepoy (Clerk) in the year 1961 and retired from service in the year 1977 as Nayab Subedar. After retirement from the Indian Army, he was re-employed as Assistant Sub-Inspector (Clerk-cum-Typist) in the Central Industrial Security Force with effect from 30-5-1978. Subsequently, he was also promoted to the posts of Sub-Inspector and Inspector and ultimately retired from service on attaining the age of superannuation on 30-6-2000. For the service rendered in the Army, his pension was fixed taking into consideration the last pay drawn by him in the Army as Rs.119/- as a provisional and finally it was fixed at Rs.125/- per month. Subsequently, the same was enhanced to Rs.145/- in the year 1979 and Rs.375/- from 1-1-1986. After re-appointment, petitioner was paid the salary including the pension attached to the post of Assistant Sub-Inspector, Sub-Inspector and Inspector without deducting any amount, which he was obtaining as pension for the service rendered in the Army,

except the pension equivalent to the gratuity i.e. @ Rs.9.23 and later on Rs.20.23 ps. Consequent to the Fourth Pay Commission recommendations, the pension of the petitioner for the service rendered in the Army was enhanced to Rs.375/- per month. The recommendations of the Fourth Pay Commission were given effect to from 1-1-1986. In fact, while implementing the Fourth Pay Commission recommendations, the amount of enhanced pension was deducted from 1-1-1986 from the salary of the petitioner under CISF Rules, which resulted in recovery of the enhanced pension from 1-4-1979 onwards over and above the pension, which he was drawing as Rs.125/- per month; thus making the total recovery at Rs.41,671/-. This whole recovery was sought to be made only on the ground that the petitioner had not opted for ignorance of entire pension in terms of OM dated 13-12-1983. Challenging the said recovery, several writ petitions were filed before the Supreme Court and the Apex court held that such a deduction was arbitrary and illegal. Now, on the basis of the Fifth Pay Commission recommendations, the pension of the petitioner was enhanced from Rs.375/- per month to Rs.1275/- per month. Again after the enhancement, the Department has repeated the same arbitrary action of recovering the enhanced amount of pension from the petitioner's salary in the same manner as was done earlier. Aggrieved by the same, the present writ petition is filed.

A detailed counter affidavit has been on behalf of respondents. In paragraph-5 of the said counter, it is stated as under:

> "It is also pertinent to mention here that the matter was taken up with Govt.of India/MHA in view of withdrawal of DP & T earlier OM dated 11.09.1987 providing for adjustment of enhanced pension wef 01.01.1986 vide their OM dated 14.10.1997 and the Hon'ble Supreme Court judgment dated 08.12.1997. DP & T had clarified that field held vide their OM 14.10.1997 and dated 19.11.1997 are different and the pay of re-employed ex-servicemen, who had not opted for ignorance of entire pension in terms of Min.of Finance OM dated 13.12.1983 need to be refixed by adjusting the enhanced army pension wef 01.01.1996. Accordingly, the pay of Shri Y.C.Rangaiah has been fixed by adjusting the enhanced army pension, as he had not opted for ignorance of entire pension in terms of OM dated 13.12.1983."

Heard both sides. I have gone through the Judgment of the Apex Court reported in **UNION OF INDIA v. VASUDEVAN PILLAY.**

The only reason for refixing by adjusting the enhanced Army pension was that the petitioner had not opted for ignorance of entire pension in terms of OM dated 13-12-

1983. While dealing with a similar question that had fallen for consideration while implementing the recommendations of the Fourth Pay Commission, the Supreme Court in the said decision held as under:

> "**12**. The ground of attack is that the aforesaid decision violates Articles 14 and 16 of the Constitution inasmuch as there is no rational basis for classifying the employees for the aforesaid purpose on the basis of their being in employment on 1-1-1986. This submission has been advanced because the reduction of the aforesaid nature has not been made in respect of those who have been in employment since 1-1-1986. The additional affidavit filed on behalf of Respondent No.1 in SLP(C) No.17456 of 1991 on 25-8-1994 contains some names of those who were re-employed after 1-1-1986 and are being paid both the revised pay and revised pension. This factual position has been admitted in the aforesaid written submissions filed on behalf of the Union of India inasmuch as it has been stated in para 9 that the pensioners who are re-employed after 1-1-1986 enjoy the benefit of revised pay and also revised pension with effect from 1-1-1986.
>
> **13.** Reliance has been placed in support of aforesaid submission on a two-Judge Bench decision of this Court, to which one of us (Kuldip Singh,J) was a party. That decision was in the case of *T.S. Thiruvengadam v. Secy. To Govt.of India (1993(2) SCC 174)*. The facts of that case are, however, different inasmuch as there the Memorandum dated 16-6-1967 stating that revised pensionary benefits would be made available only to those Central Government servants, who have been absorbed in public sector undertakings after that date was not found to be constitutional because the very object of brining to the existence the revised terms and conditions by the memorandum was to protect the pensionary benefits, which the Central Government servants had earned before their absorption into the public sector undertakings. It was, therefore, held that restricting the applicability of the revised memorandum only to those who are absorbed after coming into force of the same would not only defeat the very object and purpose of the memorandum, but would be contrary to fair play and justice also.
>
> **14**. Despite the aforesaid decision being of no aid in the present cases, we find no logic and basis for classifying the re-employed persons on the basis of their being in employment on 1-1-1986. Indeed, no justification has been canvassed before us. The decision, which held the field before the impugned memorandum in not taking note of pension while fixing pay of the ex-servicemen on re-employment, which was based on good reasons, had no good reason for its reversal, as enhanced pension was not confined to those who were in employment on 1-1-1986. The impugned decision is, therefore, arbitrary and is hit by Articles 14 and 16 of the Constitution. We, therefore, declare the same as void."

In the said Judgment, the Supreme Court categorically held that the decision to reduce the enhanced pension from the pay of those Ex-servicemen only who were holding a civil post as on 1-1-1986 following their re-employment was unconstitutional. Learned counsel for the petitioner also relied upon an unreported Judgment of Delhi High court in W.P.No.4759 of 2003, dated 21-1-2004, which was

disposed of following the said Judgment in **VASUDEVAN PILLAY**'s case (supra). .

I am in full agreement with the submissions made by Sri M.Ramarao, learned counsel for the petitioner, that respondents have adopted the same principle as was adopted after the recommendations of the Fourth Pay Commission were sought to be implemented, which became concluded in the said Judgment of the Apex Court (even after the Fifth Pay Commission recommendations). I am of the opinion that the respondents cannot discriminate between the persons, who had retired and unemployed and those who have retired and employed in receiving the pension for the service rendered by them in the Indian Army. Following the ratio laid down in the above Judgment of the Supreme Court, the writ petition is liable to be allowed.

Accordingly, the Writ Petition is allowed and the impugned order is set aside. The respondents are directed to refund the amount recovered from the petitioner, within a period of three months from the date of receipt of a copy of this order.

It is brought to my notice that out of Rs.53,759/- an amount of Rs.19,349/- was recovered from the gratuity of the petitioner. Learned counsel for the petitioner states that against the amount of gratuity recovered from the petitioner, the petitioner is entitled for interest. Though interest cannot be allowed for the entire deductions made, but for the amount, which was deducted from out of the gratuity, the petitioner shall be paid interest at the rate of 9% per annum from the date of recovery till the date of payment.

05-11-2004

prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Friday, Fifth day of November Two thousand and Four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Secretary to Finance, Union of India,

Central Secretariat, New Delhi.

2. The Director General, Central Industrial

Security Force, Ministry of Home Affairs,

Block No.13, CGOs complex, Lodhi Road,

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